

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



(b)(6)

**U.S. Citizenship
and Immigration
Services**

DATE: **MAY 02 2013**

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petitioner asserts that the beneficiary qualifies for Schedule A, Group I classification. As required by statute, the petitioner submitted a U.S. Department of Labor ETA Form 9089, Application for Permanent Employment Certification. The director did not contest the beneficiary's eligibility for the classification sought. According to the director's decision, the sole basis for the denial was that "[t]he petitioner has not submitted a prevailing wage determination for a position that has the same requirements as the position on the labor certification."

On appeal, counsel submits a brief and previously submitted evidence. For the reasons discussed below, the petitioner has complied with the regulatory requirements for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" in pertinent part as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

II. ANALYSIS

On the ETA Form 9089, Part H, and on the notice of filing, the petitioner indicated that a bachelor's degree in physical therapy or a foreign educational equivalent plus five years of progressive experience in the job offered are the requirements for the offered position. The prevailing wage determination included "Master's/Advanced Degree or its equivalent in Physical Therapy" as the requirements for the position. As stated above, the regulation at 8 C.F.R. § 204.5(k)(2) provides that a United States baccalaureate degree or a foreign equivalent degree followed by at least five

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years of progressive experience in the specialty is the equivalent of a master's degree.

III. CONCLUSION

The minimum requirements for the offered position listed on the prevailing wage determination and on the ETA Form 9089 are equivalent based upon the regulation at 8 C.F.R. § 204.5(k)(2).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.